

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 5TH DAY OF JUNE 1998

BEFORE :

THE HON'BLE MR.JUSTICE TIRATH S.THAKUR

WRIT PETITION No.12199/1996.

BETWEEN :-

Smt.Sowbhagya,
w/o Sri Siddabasavaradhya,
No.104, I.T.I. Layout,
Vidhyapeeta Main Road,
BANGALORE - 560 085.

...Petitioner.

(By Sri.B.K.Sampath Kumar, Adv.,)

A N D :

Karnataka Industrial Areas
Development Board,
No.14/3, 2nd Floor,
Nrupathunga Road,
BANGALORE - 560 002.

...Respondent.

(By Sri.Ashok B.Hinchigiri,Adv.,for Respt.)

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This writ petition filed praying to quash the Annex-E dated 6/8-4-1996 and direct the respondent refraining it from dispossessing the petitioner from plot No.11(A) of Doddaballapur Industrial Area,Doddaballapur; etc.,

This writ petition coming on for prly.hearing in 'B' group this day, the Court made the following order :

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O R D E R

Industrial Plot No.11(A) in Kasaba Industrial Area, Doddaballapur, was allotted to the petitioner for setting up an industrial unit as early as on 22nd of August 1984. The delivery of possession of the plot was delayed but was eventually handed over on 15th of July 1987. As per the terms and conditions governing the allotment, the petitioner was required to implement the project by the 27th of March 1988. A lease-cum-sale Agreement was thereafter executed between the parties in December, 1988, and time for implementation of the project extended upto 31st of March 1989. On the failure of the petitioner to submit the building plans for approval of the Board, complete the Civil construction work and commission the unit, the Board issued a notice on 23rd of May 1989 for resumption of the plot. This notice was challenged by the petitioner in writ petition No.13091/1989 which was disposed of by a single Bench of this Court by its order dated 2nd of November 1989 with the following directions :

" In view of this, this petition is allowed. The order dated 18/23-5-1989 bearing No.KIADB 2364/89-90 produced as Annexure-K is hereby quashed. The respondent is directed to give

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water connection to the Plot No.11(A) of Doddaballapur Industrial Area allotted to petitioner within one month from the date of receipt of this order, and from the date of giving water connection, the respondent shall extend time appropriate to the nature and extent of construction to enable the petitioner to complete the construction."

2. The Respondents' case is that in obedience to the above direction, time for completion of the project was extended by four months and the petitioner directed to get in touch with the chief Development Officer, KIADB for obtaining the requisite approval for her building plans and for securing a water connection. Reliance is in this regard placed upon an order dated 30-7-1990 produced as Annexure-R4 to the objections. The petitioner did not however according to the Board take any action in the matter instead a request was received from her on 7th of January 1992 in terms of Annexure-R5 for extension of time for completion of the project by a further period of three months. The petitioner did not it appears start civil works or commission the project even after the expiry of the said period and till as late as 23rd of March 1996.

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By a communication produced as Annexure-D, to the writ petition, the Board pointed out that the petitioner had not despite sufficient opportunity either made any attempts to take the requisite water connection or start the construction work. This was followed by another communication dated 6th of April, 1996 Annexure-E, to the writ petition by which the Board in exercise of its powers determined the lease agreement executed between the parties and directed the petitioner to present herself on 26th of April 1996 to witness its resumption. Aggrieved, the petitioner has called in question the said order in the present writ petition.

3. Mr Sampath Kumar, learned Counsel for the petitioner made a two-fold submission. Firstly he contended that the petitioner has already filed a contempt petition against the Respondents alleging non-compliance with the directions issued by this Court in its order dated 2nd of November, 1989. He urged that since the Court has issued a Notice to the Respondents in the said proceedings, it would be more appropriate if the present writ petition is directed to lie over till such time the said proceedings were taken to their logical conclusion. Hearing and disposal of the present petition

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even before the disposal of the said contempt petition, argued the learned Counsel, would amount to rendering the said proceedings redundant and infructuous. Secondly, he contended that the failure on the part of the petitioner to complete the project and to commence production was entirely due to the failure of the Respondents to provide the requisite water connection, despite the directions issued by this Court in the order mentioned earlier. He submitted that the petitioner had been acting diligently and addressing repeated letters to the Board, copies whereof he has produced as ANNEXURE-C1 to 10, asking the Board Authorities to provide the water connection but all such requisite had fallen flat on the respondents. The petitioner was therefore in no position either to commence the construction of the building or start production as required under the terms of the agreement.

4. Mr Hinghigeri, on the other hand urged that the petitioner had absolutely no justification for her failure to have commenced construction or gone into production within time frame fixed by the orders of the Board dated 30th of July 1990. He submitted that in obedience to the Court's order the Board had extended

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the time frame for completing the project by four months and issued requisite directions for grant of water connection subject to the petitioner approaching the competent Authority in that regard. He submitted that documents produced as ANNEXURES-C1 to C9 were fabricated documents which did not bear any acknowledgement of the Respondent-Board nor were the same found in the official record maintained in the ordinary course of the official business. He submitted that these document had been concocted only with a view to give an impression as though the petitioner had been acting diligently only to avoid the consequences flowing from her inaction.

5. I have given my anxious consideration to the submissions made at the Bar. The primary question that falls for consideration is whether there is any justification behind the petitioner's failure to commence construction of the unit and go in to production within the extended period granted to her for the purpose, While according to the petitioner her failure to do the needful is attributable to the omission on the part of the Respondents to grant her the requisite water connection the respondent claims that the petitioner had at no stage been serious for obtaining the

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~~request~~ water connection or taking up the project in the right earnest. The documents produced by the Respondents however sufficiently demonstrate that time for completion of the project was extended in consequence of the directions issued by this Court by an order dated 30th of July, 1990. A reading of the said order makes it manifest that the Board had not only extended the period for completion of the project in view of the directions issued by this Court but also instructed the petitioner to apply to the Officer concerned for obtaining a water connection. Not only that the petitioner's own communication dated 7th of January 1992 produced as ANNEXURE-R5, totally belies the petitioner's version that the failure on the part of the petitioner to complete the project was entirely on account of the non-availability of water. A closer reading of the said communication would show that the petitioner did not make any grievance in the same in so far as the grant of a water connection was concerned. On the contrary, the request made in the communication was for grant of three months further extension for completing the project. As the time earlier granted by the Board had already expired it was not strictly speaking obligatory for the Board to have responded to the request made by

the petitioner. What is important is that at no stage after the 7th of January 1992, did the petitioner either take any steps for securing the requisite water connection or institute any contempt proceedings in that regard for the alleged defiance of the directions issued by this Court in the earlier writ petition. The petitioner in fact expects this Court to believe that her letters produced as ANNEXURES-C1 to C9 were sufficient to demonstrate her keenness for setting up the project. Apart from the fact that ANNEXURE-C1 to C9, do not bear any acknowledgement of the Respondent-Board, I have no reason to disbelieve the statement made on oath by the Respondent to the effect that the official record of the Board does not bear the said communications. I am inclined to accept the version of the respondent that the communication relied upon by the petitioner is an effort to somehow justify and explain her inaction spreading over nearly 5 years or so. It is not in dispute that even after the lapse of nearly eight years no worthwhile steps were taken for securing the requisite water connection. It is indeed, interesting to note that the contempt proceedings which the petitioner has launched had come only as late as the end of 1997. There is no

explanation muchless an acceptable one for the continued silence of the petitioner over what she claims to be a palpable defiance of the Court order by the Respondents. The question is not whether the petitioner is entitled to claim any punitive steps against the Respondents even after eight years. The question is whether the petitioner's version that she was diligent and anxious to set up the project can be accepted. The very fact that the petitioner was armed with a Court direction which she could have effectively enforced against the Respondent as also the fact that she failed to do so without any justification is in my opinion sufficient to belie her version that she was keen to implement the project. Mr.Kumar however argued that the order extending time -for implementation and instructing the petitioner to approach the concerned Officer for getting the water connection had never been served upon the petitioner. That is in my opinion an argument made in total despair and needs notice only to be rejected. The Respondents have in specific terms relied upon the order issued by them in the objections filed on their behalf. The petitioner has not chosen to file a re-joinder to refute the averments made in that regard. It does not therefore lie in the mouth of the petitioner to deny receipt of

the said order. That apart communication dated 7th January, 1992 received from the petitioner by the Board does not give an impression as though the Board had not implemented the directions of the Court. The letter does not accuse the respondents of having defied the Court whether regarding the grant of extension or the water connection.

6. Mr Sampath Kumar, lastly argued that even if the Board decides to resume the possession of the land, the Respondent shall have to take recourse to the procedure established by law for recovery of the possession of the plot. He submitted that the resumption be only justified taking of proceedings under the Public Premises (unauthorised occupants) Eviction Act. Mr Hinghigeri, did not dispute this position and submitted that the Board would recover possession only in accordance with the procedure established by law. This statement from Mr Hinchigeri should in my opinion sufficiently allay the the apprehension of Mr Sampath Kumar that the Board is likely to throw out the petitioner summarily.

7. In the totality of the above circumstances therefore I have no hesitation in holding that the petitioner had failed to implement the project with due diligence

within the extended time granted to her for the purpose, without any lawful justification. The decision of the Board to resume the land which remains unutilised for the past so many years, cannot therefore be found fault with.

8. Before parting I cannot help observing that I have noticed a marked tendency among the allottees securing allotments from the Board for setting up Industrial Units delaying such units and contesting resumption on flimsy grounds. The present is one such classic case where the allotment though made as far back as in the year 1984 the unit has not seen the light of the day. Apart from the fact that the continuance of such allotments results in stagnation of the scarce land resource necessary for setting up industrial units, it deprives genuine entrepreneurs of an opportunity to set-up such units. The Board would therefore do well to keep a vigilant eye over such abuse of concessions by those who are not interested in setting up units and who secure and intend to protect the allotment only with a view to make ^a fortune at some future stage.

9. In the result this writ petition fails and is hereby dismissed with costs assessed at Rs.1,500/-.

